PUBLIC PROSECUTOR v. SIM MAI TIK

[O.C.J. (Sinnathuray J. & Chan Sek Keong J.C.) July 3, 1987]

[Singapore – Criminal Case No. 32 of 1985]

Dangerous Drugs – Trafficking – Accused charged with trafficking 67.49 gms. of diamorphine – Defence that drugs were for own consumption – Misuse of Drugs Act (Cap. 185, 1985 Ed.), ss. 5(a) & 33.

Dangerous Drugs – Trafficking – Possession of diamorphine – Scope of section 17(e) of Misuse of Drugs Act (Cap. 185, 1985 Ed.).

On August 5, 1984, the accused and one Ong Hong Yiat drove towards the Woodlands Customs Checkpoint and were stopped by the narcotics officers for inspection. A narcotics detector dog NDD Clyde was led into the car. It went to the back of the front passenger seat, wagged its tail and refused to leave the area. According to the dog's handler, the dog gave an abnormal response to the area thus indicating the presence of heroin.

The accused in the course of the search, said in Hokkien, "Help me, I was given a bundle and I kept it in the cassette box." The accused led SNO Lim to the car, opened the door and removed a cassette box from under the front passenger seat. When the said box was opened, it was found to contain a parcel wrapped in newspaper and some cassette tapes. The parcel was found to contain seven bags and in each were ten sachets of granular substance. The said 70 sachets were found to contain a total of 276.6 gms. of granular substance with a diamorphine content of 67.49 gms.

Ong Hong Yiat was also searched and two sachets containing 1.7 gms. of diamorphine were found in her handbag.

At the time of arrest, there was found in the said car currency notes amounting to S$19,327, M$3,425 and US$6 which belonged to the accused. The amount of cash found on Ong Hong Yiat was $2,714.50.

Urine samples of the accused and Ong were found to contain morphine.

The police found two bunches of keys on the accused. One of the keys was his room key for No. 31 Jalan Wong Ah Fook. The said premises were raided and two sachets were found on the premises. They contained 0.80 gms. and 1.17 gms of heroin. One plastic straw discovered on the premises was found to contain 0.124 gms. of heroin.

On August 8, 1984, the accused was sent to Changi Prison Hospital and was found to have drug withdrawal syndrome. The doctor who examined him testified that on the basis of his symptoms, the accused was a moderate heroin addict within his classification of mild, moderate and heavy addiction.

On August 5, 1984, the accused made a statement under section 121(6) of the Criminal Procedure Code to a senior narcotics officer. The procedure prescribed by law was duly followed. The accused said in Hokkien, "I brought the peh hoon into Singapore. My girlfield who was arrested did not know anything. For each trip I was paid $1,000. I am a peh hoon addict and was forced to do it because of financial difficulties. I have to support my mother and three younger sisters."

At the hearing the accused did not challenge the admissibility of his confession.

At the end of the prosecution case the court found that the prosecution had adduced sufficient evidence against the accused. The defence was called and the accused elected to give evidence on oath. His defence was that he was a heroin addict and that he brought the heroin into Singapore for his own consumption.

His explanation for the amount of cash found in his possession was that he was an illegal moneylender and an operator of a gambling den from which activities he made S$4000 and S$3000 respectively each month.

Held: (1) the accused had not on the balance of probabilities rebutted the presumption that he was trafficking in heroin as charged. Even in the absence of the statutory presumption of trafficking, the irresistible inference from the facts was that the accused intended to and did traffic in heroin at the time of his arrest;

(2) the prosecution had proved beyond reasonable doubt that the accused had in his possession on August 5, 1984, at the Woodland's Customs Checkpoint not less than 67.49 gms. of heroin for the purpose of trafficking;

(3) neither section 17 nor the definition of controlled drug is qualified in any way as to the manner in which the diamorphine is possessed by or found in the possession of an accused person. The said section applies where a person is proved or presumed to have had in his possession a prescribed amount of diamorphine. It does not matter that the said amount of diamorphine is compounded or mixed with or in any other substance so that it is not of 100% purity nor does it matter that the diamorphine or mixture or compound of which it is part is found in one container or package or in several containers or packages. What matters is the amount of diamorphine, however mixed in any substance or packed that is found in the possession of the accused at any one time;

(4) the accused should be convicted as charged and sentenced to death.

CRIMINAL TRIAL.

Denis Tan for the accused.

Ms Jennifer Marie (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Chan Sek Keong J.C. (delivering the Grounds of Decision): The accused, Sim Mai Tik, was convicted by us after a three-day trial on a charge that on August 5, 1984 at about 3.25 pm. at the Woodlands Customs Checkpoint, Singapore he did traffic in 67.49 grams of diamorphine without

any authorisation under the Misuse of Drugs Act (Cap. 185, Revised Edition 1985) and have thereby committed an offence under section 5(a) and punishable under section 33 of the Misuse of Drugs Act.

On August 5, 1984, at about 7.45 am, a group of five narcotics officers attached to the Central Narcotics Bureau ("CNB"), Singapore, assembled at the Woodlands Customs Checkpoint to await a Malaysian registered white saloon car bearing registration number JBB 9373. At 3.05 pm, the said car was spotted queuing up at one of the car bays at the said checkpoint allotted to Malaysian registered cars. At about 3.10 pm, the car reached Counter 20 for immigration clearance. After that, the car was directed by a customs officer to the Customs Inspection Pit for a 100% search for drugs.

At the Inspection Pit, the driver and a female passenger were instructed to get out of the car and a narcotics detector dog NDD Clyde was led into the car. NDD Clyde went to the back of the front passenger seat, wagged its tail and refused to leave the area. According to his handler, Tan Chwee Hai, NDD Clyde gave an abnormal response to the area thus indicating the presence of heroin. The driver, who was the accused, and the female passenger, identified as Ong Hong Yiat, were then directed into separate search rooms for physical search.

Nothing incriminating was found on the accused. However, in the course of the search, the accused said in Hokkien, "Help me, I was given a bundle and I kept it in the cassette box." The accused then led SNO Lim to the car, opened the door and removed a cassette box from under the front passenger seat. When the said box was opened, it was found to contain a parcel wrapped in newspaper and some cassette tapes. The parcel was unwrapped and seven plastic bags were found contained in a single plastic bag coated with grease. The seven bags each contained ten sachets of granular substance.

At the same time, when Ong Hong Yiat was searched, the officer found in her handbag two sachets of brownish substance wrapped in tissue paper.

Urine samples were also taken from the accused and Ong Hong Yiat at the time of their arrest.

At the time of arrest, there was found in the said car currency notes amounting to S$19,327, M$3,425 and US$6 which belonged to the accused. The amount of cash found on Ong Hong Yiat was $2,714.50.

The 70 sachets and the 2 sachets were then weighed in the presence of the accused and Ong Hong Yiat. Subsequent examination of the 72 sachets by Dr. Chow Shui Tse, a Senior Scientific Officer, showed that the 70 plastic bags contained a total of 276.6 grams (nett) of granular substance with a diamorphine content of 67.49 grams (nett). The amount of diamorphine found in the other 2 sachets by Dr. Chow was 1.7 grams (nett), with the granular substance weighing 7.91 grams (nett).

The urine samples of the accused and Ong were also tested on August 7, 1984 at 8.35 am. and found to contain morphine.

At the time of his arrest, two bunches of keys were found on the accused. He told the customs officers that one of the keys in the bunches was his room key for No. 31, Jalan Wong Ah Fook. At 9 pm. that night, a party of Malaysian narcotics officers raided the said room and recovered, *inter alia*, the following items:

a. 2 sachets of granular substance believed to be heroin.
b. One expired passport of Sim Mai Tik, the accused.
c. One 'Rotel' plastic-sealing machine.
d. 2 bundles of plastic straws.
e. A photograph of a female Chinese.
f. Half packet of plastic bags.
g. 21 pieces of polythene bags.
h. A straw of granular substance believed to be heroin.
i. A diary.

The two sachets were subsequently examined by Qua Sai Chuan, a chemist attached to the Chemist Department of Johor, Malaysia and found to contain 0.80 grams and 1.17 grams of heroin. One plastic straw was found to contain 0.124 grams of heroin but no trace of heroin or morphine was found on the Rotel sealing machine.

On August 5, 1984, at 8.25 pm. the accused was examined by a medical officer in the Singapore General Hospital and found to be generally

well. No bodily injury was found on him. He was discharged. On August 6, 1984, at about 12.30 pm, the accused was examined by another medical officer in the SGH. His general condition was found to be satisfactory and there was no sign of drug withdrawal. However, the accused complained to the doctor that he was "craving" for drugs. On August 8, 1984, at about 12.15 am, the accused was sent to Changi Prison Hospital for examination. He was found to have drug withdrawal syndrome and admitted into hospital. His condition was otherwise fair. The doctor, who examined him, testified in court that on the basis of his symptoms, the accused was a moderate heroin addict within his classification of mild, moderate and heavy addiction. The accused was discharged from hospital on August 14, 1984.

On August 5, 1984, at about 9.25 pm, the accused made a statement under section 121(6) of the CPC to Jamaludin B. Salleh, a senior narcotics officer through the interpretation of a certified interpreter. The procedure prescribed by law was duly followed. The accused made a voluntary statement in Hokkien as follows:

"I brought the peh hoon into Singapore. My girlfriend who was arrested with me did not know anything. For each trip, I was paid $1,000/–. I am a peh hoon addict and was forced to do it because of financial difficulties. I have to support my mother and three younger sisters."

At the hearing, the accused did not challenge the admissibility of his confession.

Evidence was also adduced to show that between May 29, 1984 and August 1, 1984, the motor vehicle JBB 9373 entered Singapore on 36 occasions. The passport of the accused also showed that between January 28, 1984 to August 5, 1984, the accused entered Singapore from Johor Bahru 103 times and between January 29, 1984 to August 4, 1984, he entered Johor Bahru from Singapore 102 times. A comparison of the actual dates shows that the accused, when he stayed overnight in Singapore, never stayed for more than one night continuously. He was indeed a frequent visitor to Singapore.

At the end of the prosecution case, we found that the prosecution had adduced sufficient evidence against the accused which, if unrebutted, would warrant his conviction. Accordingly, we administered the usual allocution to the accused who elected to give evidence on oath.

His defence was that he was a heroin addict and that he brought the heroin into Singapore for his own consumption. He would consume about one to two sachets a day. He would buy heroin by the pound and he would keep ½ lb in Johor Bahru and the other ½ lb in Singapore. He said that earlier that day, he had bought from a dealer in Johor Bahru 60 sachets wrapped in a bundle and that he put the bundle in the cassette box without opening it. He did not realise that there were 70 sachets in the bundle. When asked why he brought in such a large quantity for his own consumption, he explained that since he came to Singapore very often and he had to consume heroin, it was convenient to bring in a larger amount and leave it behind so that he would not have to bring heroin every time he came to Singapore. When asked where he kept the heroin in Singapore, he said that he kept it in some unoccupied house in the Yio Chu Kang area near where he was operating a gambling den in partnership with two others. He would hide the sachets of heroin in paper drink boxes and the boxes would be strewn around the compound of the house which was overgrown with grass so that other people would not find them. The accused also said that whenever he was in Singapore he would consume heroin with Ong Hong Yiat in various hotels in the Geylang area where a room could be let for a small sum of money. He admitted that the heroin kept in Singapore would also be consumed by Ong Hong Yiat who was also a heroin addict.

His explanation for the amount of cash found in his possession was that he was an illegal moneylender and an operator of a gambling den from which activities he made S$4000 and S$3000 respectively each month. He also gambled on horses. He had the said moneys with him for moneylending and gambling on horses. He said that he had a master diary in which he recorded the moneylending transactions but as it was kept in an unoccupied house in the Geylang area, he did not know what had happened to it. He also said that the smaller diary which was recovered from his room in Johor Bahru, contained some of these moneylending transactions but that he would not be able to explain them without reference to the master diary. We rejected these explanations for his having in his possession the said sums of money.

As regards the other things found in his room in Johor Bahru his explanation were as follows:

(i) the 2 sachets of heroin were for his own consumption;

(ii) the plastic sealing machine was for sealing sachets of heroin for his own consumption but it had not been used since the end of 1983; it was convenient to bring heroin in sachets into Singapore so that he would know how much he would be consuming;

(iii) the straws were used by him for consumption of heroin as well as for drinks;

(iv) the polythene bags were used for putting in and throwing away household rubbish as well as the deposits of consumed heroin; (however, a comparison of these bags with the single plastic bag used to wrap the 70 sachets found in the car showed that they were similar);

(v) the straw which was found to contain heroin only contained deposits of consumed heroin.

As regards the statement made under section 121(6) of the CPC, the accused said that he made it as he was craving for drugs at that time and wanted to get it over and so that he could have cold baths in order to alleviate his craving. However, the evidence adduced by the prosecution showed that the accused did not have any serious withdrawal symptoms until August 8, 1984. The doctor who examined him testified that he was only a moderate consumer of heroin. We rejected the accused's explanation. The fact remains that the statement was admitted in evidence as a voluntary statement.

After careful consideration of the evidence and the submissions of counsel for the accused and the DPP, we were entirely satisfied that the accused had not on the balance of probabilities rebutted the presumption that he was trafficking in heroin as charged. We did not believe the explanations of the accused as set out above. The objective facts belied the accused's story. The things found in the accused's room in Johor Bahru were things which a trafficker of drugs would be expected to have. The accused was not a mere consumer of heroin. Even in the absence of the statutory presumption of trafficking, the irresistible inference from the facts was that the accused intended to and did traffic in heroin at the time of his arrest. In our view, the prosecution had also proved beyong reasonable doubt that the accused had in his possession on August 5, 1984, at about 3.25 pm. at the Woodland's Customs Checkpoint not less than 67.49 grams of heroin for the purpose of trafficking.

Counsel for the accused raised a point of law in his final submission. He contended that the accused could not lawfully be charged for one offence of trafficking in 67.49 grams of diamorphine but only for 70 separate offences of trafficking in such quantity of diamorphine as was found contained in each of the 70 packets. He submitted that section 17(c) of the Misuse of Drugs Act (Cap. 185) should be construed to apply only to diamorphine found contained in any controlled drug that is packed in a separate container or package but not to the total quantity of diamorphine that may be found, separately packaged, in the possession of an accused person. In our view, this argument was without any merit.

Section 17 reads as follows:

> "Any person who is proved or presumed to have had in his possession more than –
>
> (a) ...
>
> (b) ...
>
> (c) 2 grammes of diamorphine (heroin) contained in any controlled drug; or
>
> (d) ...
>
> shall, until the contrary is proved, be presumed to have had that controlled drug in his possession for the purpose of trafficking therein."

The expression "controlled drug" is defined in section 2 to mean "any substance or product which is for the time being specified in Part I, II or III of the First Schedule or anything that contains such substance or product." Diamorphine is a substance specified in Part I of the First Schedule.

Neither section 17 nor the definition of controlled drug is qualified in any way as to the manner in which the diamorphine is possessed by or found in the possession of an accused person. The said section applies where a person is proved or presumed to have had in his possession a prescribed amount of diamorphine. It does not matter that the said amount of diamorphine is compounded or mixed with or in any other substance so that it is not of 100% purity nor does it matter that the diamorphine or mixture or compound of which it is part is found packed in one container or package or in several containers or packages. What matters is the amount of diamorphine, however mixed in any substance or packed that is found in the possession of the accused at any one time.

We accordingly convicted the accused as charged and sentenced him to death.

Convicted and sentenced accordingly.

Solicitors: *Toh, Tan & Chow.*

RE MOHAMED SALEEM ISMAIL

[O.C.J. (Lai Kew Chai J.) July 14, 1987]

[Singapore – Originating Motion No. 4 of 1986]

Immigration – Application for long term social visit or special pass for pregnant wife – Special circumstances of case – Whether Controller of Immigration failed to exercise discretion judicially – Claim of right to equal protection under Article 12 of Constitution – Application dismissed by court – Immigration Act (Cap. 133, 1985 Ed.), s.10(1).

Constitutional Law – Application for long term social visit or special pass for pregnant wife turned down – Special circumstances of case – Whether art. 123(2) of Constitution infringed – Constitution of Singapore, art. 123(2).

The applicant at all material times was a citizen of Singapore by birth and was gainfully employed as a butcher earning $900 p.m. In July 1984 he married his wife who in September 1984 entered Singapore and was allowed to remain in Singapore on a Pass issued under regulation 14(3) of the Immigration Regulations, 1972 renewable at the expiry of every month. The Pass was renewed until October the following year when she was given a written notice on October 4, 1985 to leave Singapore by October 20, 1985.

Her solicitors appealed to the Minister for Home Affairs to grant her "further extension to remain in Singapore for a period deemed appropriate under the circumstances herein before stated." Those circumstances were that the applicant's wife was in an advanced stage of pregnancy, that the applicant for reasons of having to perform national reservist training was unable to accompany her on a flight to India and to help arrange for her stay in India and that, in any case, she could not for medical reasons undertake the air journey to India.

The Ministry of Home Affairs replied that the applicant's wife would "be allowed to stay here on compassionate ground until she (had) delivered her child." However, the Ministry made it clear that thereafter, "no further extension of stay would be granted."

A daughter was born to the couple in December 1985. The Controller of Immigration refused any further extension of the stay.

The applicant then sought from the High Court in exercise of its supervisory jurisdiction an order of mandamus directed to the Controller of Immigration requiring him to review his decision made in the exercise of his statutory discretion in refusing the written requests of the applicant's wife, an Indian national and holder of Indian Passport, for a long term social visit or a special pass to remain in Singapore till she was granted permanent residence. In the alternative, the applicant sought a declaration "that the applicant's wife is entitled to remain in Singapore on a social visit pass for two years in order not to deprive her of an opportunity to apply for permanent residence as a spouse of a citizen of Singapore under Article 123(2) of the Constitution of Singapore."

Held, dismissing the application: (1) in the exercise of the High Court's supervisory jurisdiction over inferior tribunals including administrative officers exercising judicial or quasi judicial functions under a statute or subsidiary legislation the High Court is supervising and not reviewing; the High Court in its supervisory capacity cannot substitute its own views for those of the tribunal or officer which or who had been statutorily entrusted to make the decision;

(2) the fact that a foreigner is not a member of the prohibited classes or an undesirable immigrant under the immigration legislation does not make the person automatically eligible for entry and/or residence in the Republic;

(3) there is no conflict between Article 123(2) of the Constitution and the Immigration Act. There is no basis for the argument that the Constitution permits a foreign woman who is married to a Singapore citizen to stay here for at least two years so that she can apply for citizenship.

The principle in *Andrew s/o Thamboosamy* v. *Superintendant of Pudu Prisons, Kuala Lumpur*[6] applied.

Cases referred to:

(1) *Rex* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128.
(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147, 195.
(3) *Tanjong Jaga Sdn. Bhd.* v. *Minister of Labour and Manpower & Anor.* [1987] 1 M.L.J. 124, 127.
(4) *Khawaja* v. *Secretary of State* [1983] 1 All E.R. 765; [1984] A.C. 74.
(5) *Re Meenal w/o Muniyandi* [1980] 2 M.L.J. 299.
(6) *Andrew s/o Thamboosamy* v. *Superintendant of Pudu Prisons, Kuala Lumpur* [1976] 2 M.L.J. 156.

ORIGINATING MOTION.

Nathan Isaac (*Thangavellu* with him) for the applicant.

S. Tiwari (Senior State Counsel) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: By this originating motion the applicant, a citizen of Singapore is seeking from the High Court in exercise of its supervisory jurisdiction an order of mandamus directed to the Controller of Immigration requiring him to review his decision made in the exercise of his statutory discretion in refusing the written requests of the